

#20021-351-RLG



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Attorney for Defendants, Robert Nolan, Warden of the Cape May County Correctional Facility,
and Cape May County

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(Camden Vicinage)**

DANA GILROY, SUSAN KUSEK,
JOSEPHINE SCHEID and SANDRA TARIN,

Plaintiffs,

vs.

ROBERT NOLAN; WARDEN OF THE CAPE
MAY COUNTY CORRECTIONAL
FACILITY; CAPE MAY COUNTY (directly
and/or by and through its departments, the
Sheriff's Office and/or the Correctional
Facility); DARLENE ASECIO-PEREZ; AMY
NIELSON; A. NIELSEN; JOHN DOE(S) 1 – 5,
a fictitious name(s); JOHN DOES 6 – 40, a
fictitious name(s), individually, jointly,
severally and/or in the alternative,

Defendants.

C.A. NO.:

NOTICE OF REMOVAL

The Defendants, Robert Nolan, Warden of the Cape May County Correctional Facility,
and Cape May County, hereby give notice to the Court, pursuant to 28 U.S.C. § 1446(b), of the

removal of this action which has been pending in the Superior Court of New Jersey, Law Division, Cape May County, under Docket No. CPM-L-153-22 (the State Action). The removal to this Court, Camden Vicinage, is proper for the reasons set forth below:

1. The Plaintiffs, Dana Gilroy, Susan Kusek, Josephine Scheid and Sandra Tarin, commenced an action against the Defendants arising out of activities concerning their incarceration at Cape May County Correctional Facility.

2. Upon information and belief, Plaintiffs filed their Complaint in the Superior Court of New Jersey, Law Division, Cape May County, on or about May 9, 2022.

3. Service was effectuated on Defendants Robert Nolan, Warden of the Cape May County Correctional Facility, and Cape May County on June 13, 2022.

4. On July 18, 2022, Defendants Robert Nolan and Cape May County filed a Motion to Dismiss Plaintiffs' Complaint with Prejudice for Failure to State a Claim.

5. On August 31, 2022, the Court entered an Order granting the application to dismiss in part and denying it in part. The Court dismissed all of Plaintiffs' allegations of negligence for failure to comply with the Tort Claims Act. Plaintiffs' allegations of constitutional violations were dismissed for failure to adequately plead, and Plaintiffs were granted leave to file an Amended Complaint to identify the constitutional violations.

6. On September 14, 2022, Plaintiffs filed their Amended Complaint

7. This Notice of Removal is being filed in accordance with 28 U.S.C. §1446(b).

8. The Plaintiffs have brought a cause of action based on various allegations of violations of law. One such claim is for violations of constitutional law and civil rights based on state law.

9. Moreover, Plaintiffs have specifically alleged violations of the Prison Rape Elimination Act which is a Federal Act. 42 U.S.C. § 15601, et seq.

10. This is a Civil Action over which the United States District Court has original jurisdiction pursuant to 28 U.S.C. §1331 (federal question jurisdiction).

11. This matter is one which may be removed to this Court by virtue of the provisions of 28 U.S.C. §1441(b) and in accordance with 28 U.S.C. §1446:

- (a) Plaintiffs seek relief for claims based upon an allegation of violation of federal law, specifically the Prison Rape Elimination Act;
- (b) This Court has original jurisdiction over claims arising under the Constitution, laws and treaties of the United States pursuant to 29 U.S.C. §2602, *et seq.* and
- (c) The venue of this action is proper in this Court.

12. This court is one of proper venue pursuant to 29 U.S.C. §1132(a)(2) because the Plaintiffs are all residents of the State of New Jersey and Cape May County is a public entity within the State of New Jersey. The individual Defendant, Robert Nolan, also is a resident of the State of New Jersey.

13. To date, the other Defendants in this matter have not been served.

14. Written notice of the filing of this Petition for Removal has been given to Plaintiffs in accordance with 28 U.S.C. §1446(d) promptly with the filing of the instant pleading in Federal Court.

15. This matter was originally filed in the Superior Court, Camden County, bearing Docket No. CPM-L-153-22.

16. A copy of the Notice of Removal is being filed simultaneously with the Superior Court of New Jersey, Law Division, Cape May County in accordance with 28 U.S.C. §1446(d).

17. Pursuant to 28 U.S.C. §1446(b), this Notice of Removal is being filed within thirty (30) days after receipt of the Summons and Complaint by the moving parties.

18. Copies of all process, pleadings and Orders served upon the Defendants by the Plaintiffs are attached to this Notice of Removal as Exhibit "A."

WHEREFORE, the Defendants, Robert Nolan, Warden of the Cape May County Correctional Facility, and Cape May County, respectfully give notice to this Court of the removal of the State Action in the Superior Court of New Jersey, Law Division, Cape May County, to the United States District Court for the District of New Jersey, Camden Vicinage.



By: /s/ Richard L. Goldstein
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